

NO. 46963-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ROLFE GODFREY and KRISTINE GODFREY, husband and wife
and their marital community composed thereof,

Appellants,

v.

STE. MICHELLE WINE ESTATES LTD dba CHATEAU STE.
MICHELLE, a Washington Corporation; and SAINT-GOBAIN
CONTAINERS, INC.,

Respondents,

and

ROBERT KORNFELD,

Additional Appellant.

RESPONSE TO BRIEF OF APPELLANT KORNFELD

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STATEMENT OF THE CASE

The Brief of Appellant Robert Kornfeld (KBA) on attorney fees is surprisingly misleading – by omission. The trial court had before it no fewer than 16 pleadings (over 200 pages) on the issue of sanctions, few (if any) of which are disclosed in the KBA:

CP 425-26 (Defendants' Trial Brief seeking sanctions);

CP 437-43 (Defendants' Motion for Sanctions);

CP 446-65 (Decl. of Harris Supporting Defendants' Motion for Sanctions);

CP 466-81 (Plaintiff's Memo re Sanctions);

CP 482-506 (Decl. of Kornfeld in Opposition to Sanctions);

CP 507-10 (Decl. of Asbert (Kornfeld's Paralegal) Re Sanctions);

CP 589-92 (Petition for Award of Fees and Costs);

CP 593-96 (Decl. of (attorney) Colgan Supporting Petition for Fees and Costs);

CP 620-41 (Plaintiff's Opposition to Defendants' Request for Fees);

CP 642-52 (Decl. of Kornfeld in Opposition to Defendants' Request for Fees);

CP 653-57 (Reply Supporting Fees and Costs);

CP 658-82 (Decl. of Colgan Re Fees);

CP 683-85 (Decl. of Harris Supporting Fees & Costs);

CP 703-21 (Plaintiff's Sur-Response to Defendants' Submittal of Redacted Billing Records);

CP 722-52 (Decl. of Kornfeld Re Sur-Response);

CP 753-58 (Defendants' Sur-Reply Re Fees).

Based on the sheer volume of these pleadings, it should go without saying that the trial court had ample evidence and briefing regarding this issue on which to base a decision. The trial court simply rejected Mr. Kornfeld's factual assertions questioning the veracity and accuracy of Ste. Michelle's materials. CP 761-62.

ARGUMENT

Mr. Kornfeld makes three arguments: (1) Godfrey should win the underlying appeal, so the sanctions should be set aside; (2) the trial court failed to make findings, so there should be a remand; and (3) if there is a remand, this Court should limit the award. See KBA.

Obviously, Ste. Michelle disagrees with his first argument (and hereby incorporates its response to Godfrey's appeal). And even if Godfrey were to prevail on some issue, that does not *ipso facto* mean that sanctions were inappropriate. That depends on how the Court decides the case. It is not possible to argue the point here.

On his second point, Ste. Michelle must concede that the trial court failed to make the required findings. See CP 761-62 (Order Granting Petition For Award of Fees and Costs); ***Just Dirt, Inc. v. Knight Excavating, Inc.***, 138 Wn. App. 409, 415-416, 157 P.3d 431

(2007) (“trial courts must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award”) (citing **Mahler v. Szucs**, 135 Wn.2d 398, 435, 957 P.2d 632 (1998) (the trial court must enter findings of fact and conclusions of law to support an attorney fee award)). As Mr. Kornfeld concedes, however, the absence of findings “will result in a remand of the award to the trial court to develop such a record.” **Mahler**, 135 Wn.2d at 435. The Court should remand to Judge Stolz for findings and conclusions, which will be amply supported by the record cited above. *Id.*¹

Mr. Kornfeld’s third argument is incorrect. As he concedes, this Court does not review the 16 detailed pleadings cited above *de novo* to determine a proper fee award, but rather remands to the trial court for findings. KBA 4-5 (citing **Berryman v. Metcalf**, 177 Wn. App. 644, 659-60, 312 P.3d 745 (2013), *rev. denied*, 179 Wn.2d 1026 (2014)). In its above-listed pleadings, Ste. Michelle thoroughly contested his arguments about how much of its attorneys’ work was attributable to his gross violations of both the court’s rules and its

¹ To the extent Mr. Kornfeld may (for the first time in his reply) suggests that remand would be to a different judge, he would be incorrect. See Ste. Michelle’s BR, Arg. § E. Judge Stolz is obviously the only judge who could make these findings.

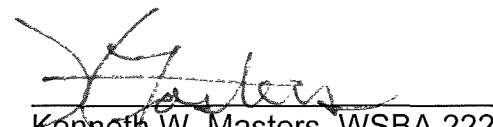
direct order to comply with them. The trial court rejected his claims, but reduced the requested fee award. Remand is the only appropriate remedy. **Mahler**, 135 Wn.2d at 435; **Berryman**, 177 Wn. App. at 659-60.

CONCLUSION

For the reasons stated, the Court should remand for entry of findings on the trial court's award of fees and costs as sanctions for dumping roughly 16,000 pages of documents on Ste. Michelle and refusing to winnow them below roughly 8,000 pages even after trial began.

RESPECTFULLY SUBMITTED this 1st day of October 2015.

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Response Brief of Appellant Kornfeld

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